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Environmental Cleanup Office

Lower Willamette Group

Co-Chairperson: Trey Harbert, Port of Portland

Co-Chairperson: Bob Wyatt, NW Natural

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October 16, 2002

Wallace A. Reid
Tara Karamas
U.S. EPA Region X
1200 Sixth Ave
Seattle, WA 98104

Chip Humphrey
U.S. EPA Region X
811 S.W. Sixth Avenue
Portland, OR 97204

RE: Portland Harbor Superfund Site



Dear Wally, Chip and Tara

As you know, we spent several sessions with the Environmental Protection Agency ("EPA") and its partners trying to negotiate a mutually acceptable approach for upstream sampling. Although we felt we had reached agreement on the location and sampling criteria for below the falls and above the falls upstream locations, we could not agree on the RM 160 location. Our last letter tried to reflect the technical discussions that our teams had concerning upstream sampling. Since the EPA informed us on September 25 that they would not approve that approach, excluding RM 160, we decided to develop an approach based on recommendations of our common and individual consultants. This was described in our letter dated September 27. We intended the letter as a courtesy to reflect our telephone conversation on September 25 in which we thought we had agreed to disagree concerning upstream sampling.

EPA and its partners clearly mistake the LWG's intentions regarding the use of the data we intend to collect. Our goal is not to use this data to establish background conditions. As we have told you both orally and in writing, we anticipate using the limited fish tissue data we collect this year from the two upstream locations within a preliminary weight of evidence approach to evaluating exposure to fish upstream of the Portland Harbor Superfund site. The upstream tissue data we collect this year will give us an indication of fish body burdens upstream of the ISA. This would be the first step in a series of iterative technical evaluations that would then determine if the concentrations are elevated, and to what extent, if any, they impact the Portland Harbor Superfund Site.

We agree that our proposed sampling is too small to constitute a statistical basis for decision making. We also agree that the OSWER guidance does not allow reference area information to be used to eliminate COPCs from the baseline risk assessment, and that site-specific background issues are addressed in the risk characterization and in risk management and risk decision making. The guidance, however, does not imply that data collection should not occur prior to risk characterization. The guidance also does not prohibit collection of preliminary data to help scope future upstream sampling and other sampling to be conducted later in the RI/FS process, which are the expressed purposes of the LWG's proposed sampling. In fact, collection of the preliminary data at this time is appropriate to make the data contemporaneous with tissue sampling being collected in the ISA. In any event, we want to reiterate that this is neither our

only opportunity to collect upstream data nor the only data collection effort we have discussed with you (e.g., lipid bags or sediment traps). At this time, our intent in the data collection is mostly exploratory.

We continue to disagree about the relevance of sampling at RM 160. To date, despite requests, we have not been provided with EPA's written technical justification of the relevance of sampling at RM 160; we do not understand how a sample collected 150 miles above the ISA is more representative of upstream conditions that may be impacting the ISA than a sample collected in closer proximity to the ISA. We understand that EPA believes that a sample collected at RM 160 may be representative of natural geochemical conditions uninfluenced by anthropogenic activities, but it is very unclear to us what use that information would be to us in determining appropriate remedial action for the site.

We regret any discomfort generated by our use of the term "reference." We understand that EPA staff or EPA partners worry that the use of these terms implies some specific use of the data. We have struggled to find an appropriate vocabulary for this work. For the future, we suggest that we use terms such as "reference" and "background" as those terms are used in CERCLA guidance documents, such as "Role of Background in the CERCLA Cleanup Program," OSWER 9285 6-07P. We believe that using standard CERCLA and risk assessment terminology will greatly enhance transparency for the public or any other audiences who wish to review our documents.

We are disappointed by EPA's assertion that our September 27 letter was sent in furtherance of a "continuing effort" to prematurely narrow site boundaries, COCs and potential receptors. We have agreed with EPA on the ISA and have not attempted to narrow this boundary. To the contrary, to date we have sampled *outside* of the ISA. We have an extremely large analyte list for Round 1, and we have repeatedly confirmed that we will not attempt to use upstream data alone to limit COPCs for Round 2. We have a very large receptor list and have even agreed to multiple receptors within a single feeding guild. We have openly agreed to such conditions in order to accommodate an accelerated RI/FS. However, no matter how large the program, a site of this scale cannot be adequately characterized in a single sampling phase. The data identified in our upstream sampling is intended to help scope more comprehensive upstream sampling, should such sampling be necessary.

We believed, until your October 2 letter, that this project was generally on track to meet our mutual goals for an expedited RI/FS. In support of this goal, the LWG collected data before the Administrative Order on Consent was signed and continues to collect data in advance of formal EPA approvals. We have proposed substantial data collection and analyses that EPA has not approved because, as we understand from your October 2 letter, of concerns about how the data could be used. The LWG believes that collection of sufficient high quality data based upon sound science is critical to completing a comprehensive and expedited RI/FS. Failure to collect upstream data this year may result in delays on the path to remedy at this site and could prevent the successful implementation of what we understood to be our mutual goal of an expedited RI/FS.

We hope that the discord surrounding the upstream sampling issue does not reflect the status of this project as a whole. Rather, we expect that the 'roadmap' development to be pursued in the coming months will provide a mechanism by which EPA, its partners, and the LWG can agree on the specific decisions to be made as a result of the RI/FS, the questions to be addressed in supporting the decisions, and the data quantity and quality needed to sufficiently answer the questions. We think that agreement on the process can be reached smoothly once open and objective discussions can be held. The accelerated process on which we embarked in late 2001 largely prohibited implementing such a process in the early stages of the RI.

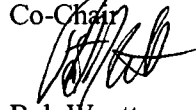
The Superfund process is normally a lengthy process. Issues will arise during each step of the process, particularly at a large site with many parties on both sides of the table. Many of our recent issues have arisen due to our mutual objective of seeking to perform the RI/FS in an expedited timeframe and in a cost-effective manner. Nonetheless, the LWG has demonstrated an ongoing commitment to perform a comprehensive RI/FS as agreed to under the AOC. We will use our best efforts and professionalism to

work with EPA and its partners to resolve disagreements so that the RI/FS process continues. We are confident that this current matter will be resolved and we look forward to sitting down with EPA in the near future to discuss the data we are collecting about the Site.

Very truly yours,



Trey Harbert
Co-Chair



Bob Wyatt
Co-Chair

cc. LWG Executive Committee
LWG Legal Committee